



**TOWN OF HARPSWELL
PLANNING BOARD MINUTES
March 18, 2009
APPROVED**

MEMBERS PRESENT

Joanne Rogers, Chair
John Papacosma, Vice Chair
Robin Brooks, Secretary
Dorothy Carrier
Roberta Floccher
Debora Levensailor, Associate
Burr Taylor, Associate

MEMBERS ABSENT

STAFF PRESENT

Carol Tukey, Town Planner
Melissa Moretti, Recording Secretary

The Town of Harpswell Planning Board meeting, being duly advertised in the Brunswick *Times Record*, was called to order at 6:32 PM by Joanne Rogers, Chair. Introductions were made of Board members, and the Pledge of Allegiance was recited.

The Chair read the Agenda and explained the hearing process and procedures for Planning Board meetings. The Town Planner made the Chair aware of an addition to the Agenda – Mr. Chip Johnson had asked for an extension of time for his project; it was decided to place the matter under “Old Business” and they would address it first.

CONSIDERATION OF MINUTES

The Chair asked for a motion to accept the Minutes of February 18, 2009 as printed; it was seconded, and the Minutes were accepted as printed by the Board. Ms. Carrier, who was not present at that meeting, abstained.

SITE VISIT

There was no site visit scheduled for this meeting.

OLD BUSINESS

Extension of Time Request for Site Plan Review Approval, Charles Johnson, Map 13 Lot 57, 25 Edgewater Road, Harpswell.

Mr. Johnson told the Board that he had been previously approved for the construction of a 62 ft. x 100 ft. storage building. [Please see Notice of Decision for June 20, 2007 Planning Board meeting in the Planning Office files.] Unfortunately, he had contracted with a disreputable firm. He stated he is now working with the Attorney General's Office in Colorado to resolve problems with that firm, so he can begin with another building company, Morton Building. He said the site is prepared, and it could be another year before the problems are resolved and he could continue with the project.

The Town Planner referred the Board to her memo and explained that they did have the authority to grant an extension of another year after the date of approval, which was June 20, 2007.

The Chair asked if the Board had any questions; there were none. There was a motion to allow the extension of the Chip Johnson request, to June 20, 2010. The motion was seconded; there was no further discussion. The Board voted unanimously to approve the extension of one year to Mr. Johnson's project.

The Town Planner said she would send Mr. Johnson a note next week to confirm the approval.

Shoreland Zoning Ordinance Amendment – Non-Conforming Structures

The Town Planner referred the Board members to their packet materials, which included a memo from the Town Attorney with proposed ordinance language that was used in the town of Boothbay Harbor; they had the same issues that the Harpswell Planning Board had. She said they had found it extremely helpful.

The Chair questioned a portion of the additional wording (shown underlined) that stated "...that has an enclosed area with height sufficient for use as living space and such enclosed area is currently used as living space." She said that many applicants were not currently using the area as living space, but that it was intended to be used as such.

Mr. Papacosma said that, even if there was a full basement that was not being used as living space, the 30% expansion could not be used; the wording took care of half the problem, but not the issue of when they approved a full basement that subsequently became "something else". There was further discussion.

The Chair asked how they would write verbiage to say that the basement was not being used currently, but ended up being used for living space.

The Town Planner suggested they add a caveat to say "you shall not use any basement addition as living space". However, she said it would be nearly impossible to enforce; the Board agreed.

It was suggested by Mr. Brooks that, if the area in question could easily be converted into living space, it should be considered as part of the 30% expansion. Ms. Floccher suggested a sentence added after could state "the 30% expansion shall be inclusive of all space added, whether used as living space or not". There was further discussion regarding the size of basement area that could be added on.

It was clarified that a crawl space was not counted because it was not living space; also, a large basement with the correct height, but used for storage, would be counted because of the height of the space.

The Chair asked the Town Planner how to solve their problem; she said they would have to say that basements could not be added [apparently not an option]. The Chair suggested that, if you were going to add a basement that could be used as living space, it had to be part of the 30% calculation. She suggested criteria of what the 30% could be and used an example: "when you redo the house, if you choose to put a full basement under it and it was of the appropriate height and could be used as living space, it must be counted as part or all of your 30%", [added by the Town Planner] "whether it is original to the house or not".

It was clarified that the Board did not want to stop anyone from putting in a basement. Discussion ensued regarding the definitions of "basement" and "foundation". The Town Planner said that the Ordinance Definitions included the word "foundation", but not "basement". She asked the Board if they wanted to go to a lower expansion limit, as some towns had [to control the size of expansion].

The Chair asked the Town Planner if there were any other suggestions she had received; it was stated that there were only the two: one response from Mike Morse at the Department of Environmental Protection (the "DEP"), and one from the Town Attorney. The Chair suggested the Board continue to seek appropriate language; it was decided they should specify as clearly as possible their objective and then see if it would be possible to create an ordinance that fit the requirement. The Board decided that, if a basement was requested, it should be part of the 30%. The issue of the Code Enforcement Office enforcing the ordinance should also be included.

The Chair suggested that they would continue to discuss the ordinance before the next year.

US Cellular Cost Estimate

There was explanation from the Town Planner of what the Planning Board had to do. She said they had to approve “the idea of it, and the amount”.

Mr. Papacosma moved that the amount of the Surety Removal Bond as proposed by Black Diamond Consultants of \$25,000 met the requirements of the Planning Board to remove their property from the telecommunications tower; the motion was amended to state that Black Diamond Consultants would provide a cost analysis and US Cellular would provide the \$25,000 Surety Removal Bond. The motion was seconded; and the Board voted unanimous approval.

NEW BUSINESS

Workshop: Blasting Ordinance

The Town Planner informed the Board that there were currently no Town regulations regarding the issue of blasting, and it had been suggested that she present a proposed ordinance to the Planning Board for their input. Ms. Carrier expressed objection and stated that it “was another hoop to jump through”. There was discussion among the Board members regarding pros and cons of having a blasting ordinance.

The Board asked for comments from a member of the audience, Don Newberg. Mr. Newberg, a geologist from West Harpswell, said the State of Maine did not license “explosive handlers”; they would have been certified/licensed in other states, i.e. New Hampshire, or by various entities, i.e. the New York City Fire Dept. He thought it was appropriate for someone to demand certification/licensing of an entity proposing to transport/use explosives in Harpswell. Mr. Newberg gave anecdotal evidence, as well as his opinion, that licensing of explosive handlers should be required in Harpswell. He mentioned that, without giving specifics, Mr. Crooker had told him that the Topsham blasting ordinance had been written in such a way as to put certain employees at risk. Mr. Newberg suggested having Mr. Crooker assist the Town of Harpswell in the creation of a blasting ordinance, should they decide to pursue the issue. The Chair asked the Board if there were any questions for Mr. Newberg; there were none.

The Town Planner explained to the Board that she had worked with the creation of the Topsham ordinance and “knew its challenges”. She said she had used only part of the Topsham ordinance, and also used ordinances from Gorham, Phippsburg and another town to formulate the current proposed ordinance. She said the proposed ordinance removed some of the challenges of the Topsham ordinance and included “better language” from the other ordinances. She also mentioned that the Board had not been given complete copies.

The Chair suggested they continue the discussion at the next meeting when they could see the proposed ordinance in its entirety.

The Town Planner asked the Board if they agreed with having the “idea” of 200 ft. addressed in the ordinance, or would they want to cut it back? She explained that it was an issue unique to Gorham’s ordinance.

The Chair reiterated the wish of the Board to wait to address the topic more fully at the next Planning Board meeting.

OTHER BOARD BUSINESS

Consideration of Planning Board exercise of jurisdiction over applications(s) pursuant to Site Plan Review Ordinance §16.4 and/or Shoreland Zoning Ordinance §10.3.2.3.

There were no jurisdictional issues to discuss.

Town Planner's Updates

There were no updates from the Town Planner. She did mention, however, that the new Shoreland Zoning Ordinance was being prepared, and would be distributed to the Planning Board when all the changes had been made.

Mr. Newberg asked if the Board was also considering the definition of "mineral extraction". He said that it was not allowed in the shoreland zone, but was allowed elsewhere with Planning Board approval. He said it appeared to "keep Anaconda Copper out of the Town of Harpswell", and exempted "all people who are building residential structures".

The Board clarified that he was specifically addressing the definition, and the Town Planner said it was a different issue, and had nothing to do with the blasting ordinance. She read the Board the definition of "mineral extraction" from the Definitions Addendum. Mr. Newberg said it appeared to be exempting permitted uses or structures; the Board agreed, and also agreed to explore the issue at a later time.

The Town Planner told the Board that Topsham did not have the verbiage of the last line in its definition. She said it caused all developments to be reviewed under the mineral extraction ordinance because nearly every development had over 100 cubic yards of soil removal; hence, every subdivision and every site plan would fall under that ordinance. (It should be noted that Ms. Tukey had previously been employed in the Planning Office for the Town of Topsham.) The issue had come up twice while she was working for Topsham, and once since she had been working for the Town of Harpswell, after-the-fact (in a subdivision review last year).

The Chair reiterated that the Board would explore the issue at a workshop, for better understanding of the issue.

A motion was made to adjourn, which was seconded.

The meeting adjourned at 7:15 PM.

Respectfully Submitted,

Melissa Moretti
Recording Secretary